Supreme Court, U.S.
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No. 92-1613

In The

Supreme Court of the United States

October Term, 1992

HERBERT BOUNDS,

Petitioner,

v.

CITY OF LEITCHFIELD,

Respondent.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF IN OPPOSITION

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COUNTERSTATEMENT OF THE CASE

The Petitioner filed a pro se action against the Respondent alleging that his rights under the United States Constitution had been violated. In particular, he alleged that the Respondent had taken a small portion of his residential property by paving a street and installing a sewer line without paying just compensation therefor.

During the course of the litigation before the U.S. District Court, the Petitioner was strongly urged to retain counsel. He steadfastly refused.

Upon motion by the Respondent, the U.S. District Court granted a Summary Judgment dismissing the Complaint. That court found that there was no material issue of fact and that as a matter of law the Petitioner's claim was barred by the appropriate statute of limitations. This of course had the effect of vesting title in the Respondent by operation of the doctrine of adverse possession.

Following an appeal to the U.S. Court of Appeals For The Sixth Circuit, that judgment was affirmed.

The Petitioner now apparently seeks to be permitted to relitigate the case before this Court by claiming that he was denied his day in court. In point of fact, the record reveals that he has already had two days in court.

SUMMARY OF THE ARGUMENT

The Respondent submits that the petition for writ of certiorari should be denied on the grounds that there is no important or special reason for granting it. The decision of the U.S. Court of Appeals was consistent with

other U.S. Courts of Appeals, the Supreme Court of the Commonwealth of Kentucky as well as this Court. Likewise there is no important question of federal law which should be now addressed by this Court.

ARGUMENT

By definition, the grant of a petition for writ of certiorari is extraordinary. Rule 10.1 (a), (b) and (c) of the Rules Of The Supreme Court squarely address the grounds which normally support such an extraordinary writ. None of those grounds exist here.

This is a case in which the Petitioner is simply seeking to re-litigate a matter which two lower federal courts have previously decided.

The issues presented to those courts were neither novel nor complex. Rather, this is a case wherein the Petitioner lost title to a fraction of his property by reason of the ancient doctrine of adverse possession. It is firmly established that the doctrine of adverse possession may not be circumvented by alleging that such a loss of title is an unconstitutional taking without just compensation. *Commonwealth Department of Parks v. Stephens, Ky.*, 407 S.W.2d 711 (1966); *Stanley v. Schwalby*, 147 U.S. 508, 13 S.Ct. 418.

The Petitioner has presented no federal question about which there are conflicting decisions with other U.S. Courts of Appeals. He has not alleged that the lower courts' decisions were in conflict with either the Supreme Court of the Commonwealth of Kentucky nor this Court.

Given the fact that the doctrine of adverse possession is of such ancient origin and of such well settled heritage, there certainly is no novel question of federal law which should now be addressed by this Court.

Likewise, the lower courts granted extreme leniency to the petitioner during the litigation of the case. No viable complaint can now be heard that there was a departure from the usual and accepted course of judicial proceedings.

It is therefore inescapable that no grounds for granting the petition for writ of certiorari exist.

CONCLUSION

While the Respondent fully recognizes the fact that there are no absolute limitations upon this Court's discretion in granting a petition for writ of certiorari, the fact remains that there are no extraordinary issues presented in this case. As is evident, none of the customary grounds for hearing the case exist. For these reasons, the Respondent respectfully prays that the petition be denied.

Respectfully Submitted,

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